IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Date of decision: 1st March, 2006

Civil Revision No. 91 of 2005

Sri B.K. Chatterjee
S/o Late Sri M.M. Chatterjee
R/o 150, Phase II, Basant Vihar
Dehradun. …..Revisionist/Defendant

Versus

Suresh Chandra Pant
S/o Late Sri Nilamber Pant
1/5 New Basant Vihar Enclave
P.O. New Forest, Dehradun. ……Respondent/Plaintiff

Shri Pankaj Miglani, learned counsel for the revisionist.
Shri J.C. Pandey, learned counsel for the respondent.

A.F.R. (Approved for Reporting)
Not Approved for Reporting

Date 1.03.2006 (Hon. Mr. Justice Prafulla)
C. Pant)

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

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Hon'ble Prafulla C. Pant, J.

This revision, preferred under Section 25 of the Provincial Small Causes Courts Act, 1887, is directed against the judgment and decree dated 31.08.2005, passed by learned Judge Small Cause Court/Additional District Judge/VII F.T.C., Dehradun, in S.C.C. suit No. 7 of 2000, whereby it was decreed for a sum of Rs. 98,750/-

2. Brief facts of the case are that the plaintiff/respondent is owner of house No. 73, Pant Villa, Vasant Vihar, Dehradun, wherein defendant/revisionist was tenant on rent at the rate of Rs. 1500/- per month. According to the plaintiff, the defendant committed default in payment of rent from 01.01.1998. It is also admitted between the parties that separate application under Section 21 of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 in P.A. case No. 106 of 1998, pending before the Prescribed Authority, was allowed by said authority on 10.10.200. An appeal No. 12 of 2000. arising out of the

said case was also dismissed and finally writ petition No. 332 of 2001, was moved by the tenant, which was also dismissed on 04.09.2001. However, the tenant (present revisionist) was allowed to vacate the house in question by 30th April, 2002. Meanwhile, a notice dated 16th March, 2000, was served by the plaintiff/respondent, making demand for arrears of rent and terminating the tenancy through said notice and filed S.C.C. suit for eviction and arrears of rent and manse profits against the defendant/revisionist

3. It is not disputed between the parties that the defendant/revisionist has already vacated the house on 30.04.2002. As such, as far as physical possession of the house is concerned, the same is already with the plaintiff/respondent. The dispute after 30.04.2002, only remained regarding payment of arrears of rent and mesne profits. Learned trial court has decreed the suit for Rs. 98,750/- towards the arrears of rent and mesne profits. Aggrieved by which, this revision has been preferred.

4. I heard learned counsel for the parties and perused the record.

5. Admittedly, the plaintiff/respondent was the landlord and the defendant/revisionist was tenant in the house in question. There is no dispute between the parties that the rate of rent as on 01.10.1998 was Rs. 1500/- per month. It is also admitted fact, as mentioned above, that the possession of the house has been handed over to the plaintiff/respondent on 30.04.2002, after the release application, moved under Section 21 of U .P. Act, 13 of 1972, was allowed by the Prescribed Authority and up-held

by the superior courts. The main dispute relates to the arrears of rent and the rate of mesne profits. Learned counsel for the defendant/revisionist, argued before this Court that the admitted rate of rent was Rs. 1,500/- per month, while the learned Judge Small Cause Court, has decreed the suit for mesne profits at the rate of Rs. 4,000/- per month. In reply to this, learned counsel for the plaintiff/respondent argued that the accommodation is in posh locality of Vasant Vihar, Dehradun. And the market value of the property is in increase. However, this Court is of the view that the question of mesne profits would arise only when tenancy of the tenant is determined. Secondly, generally mesne profits are granted at the rate of the rent unless otherwise shown to the court. From the perusal of the impugned judgment and decree, it appears that the learned trial court has not given any finding that the tenancy stood determined. The question of awarding mesne profits arises only when tenancy gets determined.

6. It is pertinent to mention here that in the proceeding, initiated under Section 21 of U.P. Act 13 of 1972, there is no need to determine the tenancy of the tenant and the relationship between the landlord and tenant continues till the vacation of the accommodation, let out to the tenant. On the other hand, in a suit under Section 20 of the same Act i.e. U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, the landlord seeks eviction of the tenant after determination of the tenancy or notice to quit. No doubt, from the evidence on record, it appears that the notice was sent by the landlord, before instituting the S.C.C. suit No. 07 of 2000 in which the impugned decree was passed. Para 5 of the notice dated 16.03.2000 (paper No. 7-C in the trial court record), shows

that the tenancy is alleged to have been determined from the date of notice itself as expression mentioned is “your tenancy is hereby determined”. In the last para of said notice, it is no where mentioned that if the tenant fails to make payment of the rent due within thirty days thereafter, tenancy would be terminated. Section 20(2) of U.P. Act 13 of 1972, requires for maintaining a suit for eviction on the ground of default in making payment of rent only if the same is not made good within a period of one month of the notice of demand.

7. In the above circumstances, since there is no finding of determination of tenancy given by the trial court, nor is there any mention in the impugned judgment that from which date the tenancy stood terminated, there is no question of payment of mesne profits. However, as far as the liability to pay the rent at the rate of Rs. 1500/- per month is concerned, that continues with the tenant till he vacated the house on 30.04.2002. That being so, the decree passed by trial court for mesne profits at the rate of Rs. 4,000/- per month is against the law and cannot be up-held. Accordingly he revision is allowed and judgment and decree passed by trial court is set aside to t he extent it is decreed for mesne profits at the rate of Rs. 4,000/- per month. The S.C.C. suit No. 7 of 2000, shall stand decreed for the arrears of rent at the rate of Rs. 1500/- per month for the period from 01.10.1998 to 30.04.2002. The rent deposited by the defendant/revisionist before the trial court shall be adjusted against the decretal sum and may be withdrawn by the plaintiff/respondent, if not already withdrawn. No order as to costs.

(Prafulla C. Pant, J.)

Dt: 1st March, 2006
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